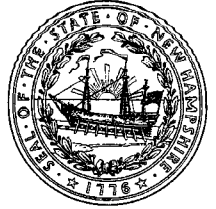




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Kevin McCarthy  
164 Golden Hill Avenue  
Haverhill, MA 01832

Re: 1373 Hooksett Road  
Hooksett, New Hampshire

**ADMINISTRATIVE ORDER**  
**NO. WD 06-024**

June 12, 2006

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division, to Kevin McCarthy pursuant to RSA 485-A:22, III. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Kevin McCarthy is an individual having a mailing address of 164 Golden Hill Avenue, Haverhill, MA 01832.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 485-A:4, XVI-a authorizes DES to regulate the removal, transportation, and disposal of septage through administration of a permit system. Pursuant to RSA 485-A:6, X-a, the Commissioner of DES has adopted NH Administrative Rules Env-Ws 1600 ("the Septage Rules") to implement this program.
2. Env-Ws 1603.01(a) prohibits any person from disposing of septage at any place or facility that does not have a permit under Env-Ws 1600, RSA 149-M, RSA 485-A:13, or RSA 485-C.
3. RSA 485-A:37 requires "[a]ny person who has installed or otherwise acquired a subsurface sewage or waste disposal system ... to operate and maintain said system in such a manner as to prevent a nuisance or potential health hazard due to failure of the system."
4. RSA 147:8 prohibits any person from occupying or allowing any other person to occupy a building unless the building is "provided with suitable drains or sewers for conveying waste water and sewage away from the premises into some public sewer, if there [is] one within 100 feet [of the building], and if not, for conveying it away underground or in some other manner that will not be offensive."

5. Kevin McCarthy is the owner of record of 1373 Hooksett Road, Hooksett, New Hampshire, as recorded in the Hooksett Assessors Office for Tax Map 18, Lots 33 and 35 ("the Property").
6. Between April 30 and June 7, 2006, DES received a series of anonymous complaints claiming that the contents of the septic tank of the subsurface disposal system ("the System") on the Property were being periodically pumped directly onto the ground adjacent to the System.
7. On June 8, 2006 at approximately 2:00 p.m., DES personnel witnessed and photographed a submersible pump installed in the System's septic tank on the Property that was pumping septage out of the tank, directly onto the land surface.
8. The Property is not a permitted septage disposal facility under Env-Ws 1600, and is not otherwise permitted under RSA 149-M, RSA 485-A:13, or RSA 485-C to receive septage.
9. Disposing of septage directly onto the land surface at the Property is a nuisance and a health hazard and is offensive.

#### **D. DETERMINATION OF VIOLATIONS**

1. Kevin McCarthy has violated Env-Ws 1603.01(a) by disposing of septage on the Property without a permit.
2. Kevin McCarthy has violated RSA 485-A:37 by operating a subsurface sewage disposal system in a manner that creates a nuisance and a health hazard.
3. Kevin McCarthy has violated RSA 147:8 by allowing people to occupy a building that does not have suitable means for conveying waste water and sewage away from the building in a manner that is not offensive.

#### **E. ORDER**

Based on the above findings, DES hereby orders Kevin McCarthy as follows:

1. **Immediately** cease and desist of all illegal disposal of septage from the subsurface system.
2. **Within 10 days of this Order**, inform DES of whether the System will be repaired or replaced or whether the Property will be connected to the Town of Hooksett's municipal sewer system.
3. **By June 30, 2006**, repair the System to a normal operating condition, or replace the System, in accordance with NH Administrative Rules Env-Ws 1000 Subsurface and Individual Sewage Disposal System Design Rules, **or** connect all facilities served by the System to the Town of Hooksett's municipal sewer system.

4. Until the System is repaired or replaced or the Property is connected to the municipal sewer system, have the System's septic tank pumped-out and the contents properly disposed of by a septage hauler licensed by the State of New Hampshire according to the following schedule:
  - a. Every 3 calendar days, or;
  - b. Whenever the liquid level in the septic tank reaches the bottom of the tank's outlet pipe, whichever occurs first.
5. Within **5 working days** of each pump-out event described in E.4 above, submit a copy of the septage hauler's invoice to DES. The invoice shall indicate the name of the hauler, the date of service, and the volume of septage removed from the tank.
6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Alexis Rastorguyeff, P.E., Residuals Management Section  
DES water Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-4128  
e-mail: arastorguyeff@des.state.nh.us


#### **F. APPEAL**

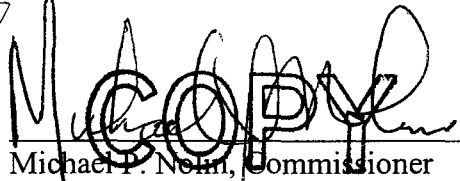
Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 Water Council Procedural Rules within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Kevin McCarthy of his obligation to comply with the Order.

#### **G. OTHER PROVISIONS**

Please note that RSA 485-A:22 and 43 provide for administrative, civil, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Kevin McCarthy's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.

  
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Harry T. Stewart, P.E., Director  
Water Division

  
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Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail/RRR: 7099 3400 0018 1294 3493

cc: Gretchen Hamel, Legal Unit Administrator  
Michelle Bonsteel – Hooksett Health Officer  
454 Hanover Realty, LLC  
ec: Public Information Officer, DES PIP Office  
Jennifer Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Richard de Seve, DES Subsurface Systems Bureau